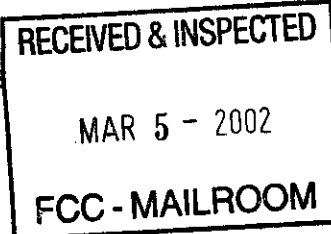


**SHIRLEY & EZELL, L.L.C.**

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March 4, 2002

*Via Federal Express*Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
CY-B402  
Washington, DC 20554

RE: In the matter of: Joint Application by BellSouth Corporation, BellSouth  
Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-  
Region, InterLATA Services in Georgia and Louisiana, FCC, CC Docket No. 02-  
35.1  
Our File No.: 1099-01

Dear Mr. Caton:

Pursuant to Public Notice dated February 14, 2002 issued by the Federal Communications Commission ("FCC") in the above referenced docket, enclosed please find the original and 4 copies of Comments and supporting affidavits of Xspedius Corp. filed this date with the FCC via its Electronic Comment Filing System.

Sincerely,

Paul F. Guarisco

PFG/mu  
Enclosures

cc: Mr. Chad Pifer

1 of 4 Copies sent 074  
CODE

17. What assurance is there that a future failure of one path of a ring will stop work in or around the protect path? BellSouth can not assure you that a failure on one path will stop work in or around a protect path, however, we can assure you that every effort will be made to prevent any outage from occurring on a ring either by equipment failure or workman error.

18. How can BellSouth explain the 3 hours it took to replace the transmitter module? Again, normally our Network Reliability Center can facilitate the normalizing of a ring within 6 to 8 hours without experiencing the type outage you had. We were not as aggressive with our escalation process as we should have been and subsequently experience an additional complication that caused the outage.

On behalf of BellSouth, let me apologize for this outage and its impact on your end-users. We believe our processes are sound and can provide you with the level of service you expect and deserve. We are committed to serving you and fully expect to delight you as a customer. In the future, if you have any operational needs, please contact me @ 205-988-6800.

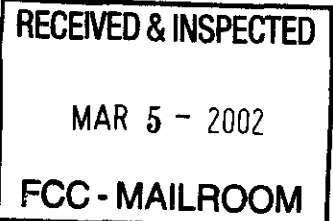
Sincerely,

Keith Andrews

Operation AVP

BellSouth's ACAC/ICSC

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554



In the matter of )  
 )  
Joint Application by BellSouth Corporation, )  
BellSouth Telecommunications Inc., and )  
BellSouth Long Distance, Inc. for Provision )  
of In-Region, InterLATA Services )  
in Georgia and Louisiana. )

CC Docket No. 02-35

**COMMENTS OF XSPEDIUS CORP.**

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Director of Regulatory Affairs  
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Counsel for Xspedius Corp.

Dated: March 4, 2002

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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Joint Application by BellSouth Corporation,	)
BellSouth Telecommunications Inc., and	)
BellSouth Long Distance, Inc. for Provision	)
of In-Region, InterLATA Services	)
in Georgia and Louisiana.	)
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CC Docket No. 02-35

**COMMENTS OF XSPEDIUS CORP.**

Xspedius Corp. ("Xspedius") files these comments in opposition to the Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., (collectively "BellSouth") for authority to provide in-region, interLATA services in the States of Georgia and Louisiana, pursuant to section 271 of the Communications Act of 1934, as amended.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

Xspedius is a facilities-based, Competitive Local Exchange Carrier ("CLEC") providing local exchange and telephone toll services in the State of Louisiana.<sup>2</sup> In Louisiana, Xspedius provides facilities-based local and long distance services in Baton Rouge, Lafayette, Lake Charles, New Orleans and Shreveport. Xspedius has its principal corporate offices located at 901 Lakeshore Drive, Lake Charles, Louisiana 70601. Xspedius primarily serves small to medium size business customers in Baton Rouge, Lafayette, Lake Charles, New Orleans and

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<sup>1</sup> 47 U.S.C. § 271. See *Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana*, Public Notice, CC Docket No. 02-35, DA 02-337 (February 14, 2002).

<sup>2</sup> Xspedius is currently providing service in five of the nine BellSouth states, including Alabama, Louisiana, Mississippi, North Carolina and Tennessee.

Shreveport utilizing its own facilities, and by purchasing unbundled network elements (“UNEs”), number portability and interconnection services, including collocation, from BellSouth. In order to be able to meaningfully compete with BellSouth, Xspedius must receive access to UNEs, local number portability, and interconnection, including collocation, in a timely and nondiscriminatory manner.

Since April 14, 2000, Xspedius has experienced a broad range of service affecting issues in its dealings with BellSouth. As a new entrant in Louisiana, Xspedius is dependent upon BellSouth for timely, accurate and reliable ordering systems and provisioning, and proper procedures within BellSouth to recognize, escalate and resolve customer-affecting service outages. Since April 14, 2000, Xspedius has experienced recurring problems related to these areas that impede its ability to meaningfully compete with BellSouth in Louisiana.

In support of its comments, Xspedius has attached hereto the affidavit of Ms. Debra Goodly, Director of Provisioning of Xspedius. Pursuant to the facts recited in Ms. Goodly’s affidavit, BellSouth fails to comply with Checklist Items two and eleven of Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the “Act”) (See, 47 U.S.C. Section 271).

In addition to BellSouth’s failure to comply with the Competitive Checklist items noted above, it has also engaged in anticompetitive activities in Louisiana. Also attached hereto are the affidavits of Clements J. Lejeune, Jr., Vice President of Planning and Engineering, and Marymargret Williams Groom, Major Account Manager of Xspedius. These affidavits show that BellSouth is apparently using proprietary information obtained from Xspedius for the purpose of BellSouth’s own Winback efforts in violation of Louisiana Public Service Commission rules, and failing to properly monitor, escalate and repair customer-affecting outages. These

anticompetitive practices of BellSouth preclude the Commission from finding that grant of BellSouth's application would serve the public interest, convenience and necessity.<sup>3</sup>

## **II. BELLSOUTH DOES NOT SATISFY THE COMPETITIVE CHECKLIST.**

BellSouth has failed to demonstrate compliance with several sections of the Competitive Checklist. Item two of the Competitive Checklist requires BellSouth to provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”<sup>4</sup> The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable.<sup>5</sup> An examination of BellSouth's OSS performance is therefore integral to the determination of whether it is offering all of the items contained in the competitive checklist.<sup>6</sup>

For OSS functions that are analogous to those that BellSouth provides to itself, its customers or its affiliates, the nondiscrimination standard requires BellSouth to offer requesting carriers access that is equivalent in terms of quality, accuracy and timeliness.<sup>7</sup> BellSouth must provide access that permits competing carriers to perform these functions in substantially the same time and manner as BellSouth.<sup>8</sup> For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent

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<sup>3</sup> 47 U.S.C. Sect. 271 (d)(3)(c).

<sup>4</sup> 47 U.S.C. § 271(C)(2)(B)(ii).

<sup>5</sup> Memorandum Opinion and Order, *In the Matter of Application by Verizon New England Inc., et al, for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, at Appendix D, para. 26 (February 22, 2002).

<sup>6</sup> *Id.*, at note 70.

<sup>7</sup> *Id.*, at para. 27.

<sup>8</sup> *Id.*

performs that function for itself.<sup>9</sup> For OSS functions that have no retail analogue, BellSouth must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete.<sup>10</sup>

BellSouth has not satisfied Item two of the Competitive Checklist because it still does not have adequate processes and procedures for the ordering and provisioning of unbundled network elements. In virtually all of its orders issued under section 271, the Commission has been emphatic about the need for adequate systems for the timely and accurate ordering and provisioning of unbundled network elements.<sup>11</sup>

Moreover, in her affidavit, Ms. Goodly describes recurring ordering and provisioning problems Xspedius has experienced when attempting to convert customers from BellSouth to Xspedius that show that BellSouth is not providing Xspedius access to OSS functions that are equivalent to that provided to itself, which deprives Xspedius a meaningful opportunity to compete. These problems include premature disconnects of customers resulting in loss of service, problems having customer numbers ported on scheduled due dates, failure to perform coordinated customer conversions as scheduled, serial clarifications of the same order, problems ordering the UNE Platform, service order accuracy problems such as BellSouth's failure to process correctly orders submitted by Xspedius – including the failure to convert the requested number of loops from BellSouth to Xspedius, and the inability to obtain information from BellSouth on the exact time customers' services will be switched from BellSouth to Xspedius.

Ms. Goodly explains that despite ongoing efforts to work with the BellSouth Account Team, Xspedius continues to experience premature disconnects of customers in Louisiana. This

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<sup>9</sup> Id., at note 74.

<sup>10</sup> Id. at para. 28.

<sup>11</sup> See SBC Kansas Order at ¶¶ 30, 103, 105, and 135; SBC Texas Order at ¶¶ 91, 92, 170; Bell Atlantic New York Order at ¶¶ 83, 163-166; Second BellSouth Louisiana Order at ¶ 83.



results in the customer losing service prior to being converted to Xspedius. This problem occurs when BellSouth processes customer disconnect orders before the customer's numbers are ported to Xspedius' switches. This problem also occurs when disconnect orders are worked by BellSouth despite Xspedius notifying BellSouth of a change in the due date for a customer conversion.<sup>12</sup>

Making the experience of losing telephone service worse, when the customer contacts the BellSouth customer service center to complain about loss of service, the BellSouth customer service representative advises the customer that Xspedius is responsible for the disconnect order and refuses to accept a trouble ticket from the customer. When this happens, Xspedius must intervene by contacting BellSouth's customer service center because BellSouth's LCSC cannot contact the customer once the disconnect order has been processed by BellSouth. In the majority of these instances, Xspedius must then contact the BellSouth repair center and request that BellSouth again check the date that the customer was due to be converted to Xspedius. Only at this time will BellSouth accept a trouble ticket from the customer.<sup>13</sup>

Ms. Goodly also explains that in her experience, these premature disconnections of customers have occurred frequently since April 14, 2000 through the present time. Mr. Goodly states that it is her impression that there is also a lack of urgency on the part of BellSouth to have these customers' service reconnected once their service is lost due to the frequency of these incidents.<sup>14</sup>

Xspedius continues to experience instances where coordinated customer conversions are not performed as scheduled. Once Xspedius submits a local service request ("LSR"), BellSouth will respond with a firm order confirmation ("FOC") date. However, the scheduled conversion

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<sup>12</sup> Goodly Affidavit at para. 3.

<sup>13</sup> Goodly Affidavit at para. 4.

<sup>14</sup> Id., at para. 7.

date is frequently missed because BellSouth fails to input or load the FOC date in its “C-Win Center.” Thus, BellSouth’s technicians are not aware that a customer conversion has been scheduled to be worked on a certain FOC date. This results in Xspedius not being able to port the customer’s number on the FOC date. When this happens, BellSouth is not willing to re-schedule the conversion, but instead requires that a new FOC date be established, which results in unnecessary delay for the customer.<sup>15</sup>

Another example of unnecessary delay that Xspedius continues to experience is BellSouth’s practice of repeatedly clarifying the same order. BellSouth may reject a customer conversion order for one reason and then when Xspedius makes the correction and sends the order back to BellSouth, BellSouth rejects it for another reason, rather than noting all errors at once. This requires Xspedius to continually re-submit the same order. Each correction delays the customer conversion another 48 hours. Additionally, Xspedius is required to pay a charge to BellSouth on each version of the order that has been clarified. Regardless of the reasons for the clarifications, an accurate one-time clarification would shorten customer conversion times.<sup>16</sup>

Xspedius also experiences recurring problems with service order accuracy where Xspedius submits service orders which are not completed accurately by BellSouth. One particular example of this problem is when Xspedius submits an order to install a certain number of customer loops, and BellSouth installs less than the number correctly set forth on the order. When the conversion order is initially submitted by Xspedius, BellSouth will respond with a firm order confirmation to Xspedius that it will install all loops requested. However, on the installation date, BellSouth will then advise Xspedius that it will install some lesser number of loops because the service order data at BellSouth’s C-WINS center shows some lesser number of

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<sup>15</sup> Goodly Affidavit at para. 11.

<sup>16</sup> *Id.*, at para. 12.

loops than requested by Xspedius, and as earlier confirmed by BellSouth. When this happens, BellSouth delays the customer installation instead of installing on the firm order confirmation date. This results in customer frustration.<sup>17</sup>

Access to due dates is also a problem. BellSouth will not provide Xspedius exact times of delivery of loops, including T-1's. Xspedius also requests and schedules coordinated hot cuts with BellSouth. However, when the conversion time arrives, BellSouth may not be ready to perform the conversion despite prior confirmation with Xspedius.<sup>18</sup>

Another recurring problem is the accuracy of BellSouth's customer service records. For example, in many instances CSRs will indicate that some customers have local service provider freezes in place preventing the conversion of these customers' accounts. Frequently, these customers will advise Xspedius that they never authorized a local service provider freeze being placed on their accounts. Having the CSR corrected adds unnecessary delay to the conversion process. Another example of inaccurate CSRs is the inclusion of an xDSL service code. Because BellSouth refuses to provide its xDSL service to end users taking voice service from a CLEC, until this service code is removed from the CSR, BellSouth will not convert the customer account to Xspedius. Ms. Goodly states that she has experienced many instances where the xDSL service code is included on customers' CSRs when in fact these customers were not xDSL customers of BellSouth. Having this service code removed from inaccurate CSRs adds an extra 15 – 20 days to the conversion interval, which delays the installation of Xspedius service. Correction of these inaccurate CSRs also requires that these customers contact BellSouth, which

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<sup>17</sup> Goodly Affidavit at para. 13.

<sup>18</sup> Id., at para. 14.

provides BellSouth another sales opportunity to entice these customers from switching to Xspedius.<sup>19</sup>

Xspedius has also experienced problems ordering the UNE-Platform from BellSouth. An example of a recurring problem with UNE-P orders is BellSouth processing conversions prior to the scheduled due date requested by Xspedius.<sup>20</sup>

These problems demonstrate that BellSouth is not providing nondiscriminatory access to its OSS functions in a manner that is equivalent to the access it provides itself in terms of quality, accuracy and timeliness, which inhibits Xspedius a meaningful opportunity to compete.

Additionally, item eleven of the Competitive Checklist requires that BellSouth be in compliance with the number portability regulations of the Commission pursuant to section 251 of the Act.<sup>21</sup> Section 251 (b) (2) of the Act requires all LECs to provide number portability in accordance with requirements prescribed by the Commission. The 1996 Act defines number portability as the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another.<sup>22</sup> Mere assertions that a Bell operating company is complying with its long-term number portability obligations are not sufficient to meet checklist item eleven. As the Commission stated in its *Ameritech Michigan Order*, an applicant must provide adequate documentation that it has undertaken reasonable and timely steps to meet its obligations with respect to long-term number portability.<sup>23</sup>

As explained by Ms. Goodly, Xspedius is also experiencing recurring problems having customer numbers being ported on the scheduled date due to BellSouth's failure to concur (i.e.,

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<sup>19</sup> Goodly Affidavit at para. 15.

<sup>20</sup> Id., at para. 16.

<sup>21</sup> Id., at ¶ 274.

<sup>22</sup> 47 U.S.C. Sect. 153(30).

<sup>23</sup> Id., at ¶ 291.

release the numbers to Xspedius) in the scheduled port date in the Number Portability Administration Center (“NPAC”) database prior to the scheduled date of the port. When BellSouth has not concurred in the porting of the customer’s numbers, on the date of the scheduled number porting, the customer may be unable to receive incoming calls. This results in Xspedius having to reschedule the conversion date with the customer, or calling the BellSouth LCSC and waiting for BellSouth to manually concur in the number porting at that time. Of course, this delay results in customer inconvenience and frustration.<sup>24</sup>

Due to these problems experienced by Xspedius in Louisiana, the Commission can not find that BellSouth has satisfied the Competitive Checklist under the Act.

### **III. BELLSOUTH ANTI-COMPETITIVE ACTIVITY.**

Apart from determining whether a Bell operating company satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience and necessity.<sup>25</sup> The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the Competitive Checklist, and that entry will serve the public interest as Congress expected.

The public interest requirement is “a separate, independent requirement for

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<sup>24</sup> Goodly Affidavit at para. 9.

<sup>25</sup> 47 U.S.C. Section 271(d)(3)(C); Memorandum Opinion and Order, *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, para. 102 (February 22, 2002).

entry” that cannot be subsumed into either of the other two broad elements.<sup>26</sup> To do so, “would effectively read the public interest requirement out of the statute, contrary to the plain language of Section 271, basic principles of statutory construction, and sound public policy.”<sup>27</sup> According to the Commission:

[W]e view the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. *While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition.*<sup>28</sup>

About the only factor found not to be relevant by the Commission is whether the BOC has complied with the competitive checklist.<sup>29</sup>

Furthermore, any attempt to limit the factors to be considered based on prior Commission orders would be unwarranted in light of the recent decision in *Sprint Communications, Inc. v. Federal Communications Commission*, 274 F.3d 549 (Cir. D.C. 2001). In *Sprint Communications*, the Court criticized the Commission’s public interest finding specifically in Kansas and Oklahoma, and thereby declared that public interest arguments are not to be

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26 Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-37, FCC 97-298 (August 19, 1997) (“Ameritech Michigan Order”) ¶¶ 385, 389.

27 *Ameritech Michigan Order*, ¶ 389.

28 Memorandum Opinion and Order, *In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29 (Jan. 19, 2001) (emphasis supplied), (“SBC Kansas-Oklahoma Order”) at ¶¶ 272-3.

29 *Ameritech Michigan Order*, ¶¶ 385, 390.

summarily dismissed or simply “brushed-off.” *Id.* at 554. The public interest standard contemplates the weighing of the entire record. Only when all the factors have been fully developed will there be a meaningful opportunity to weigh the benefits and costs of a section 271 application.

The proclaimed purpose of the federal Act is competition. *Sprint Communications, Inc. v. Federal Communications Commission*, 274 F.3d 549, 554 (Cir. D.C. 2001). It cannot be over-emphasized that it is the congressional intent to ensure that markets are open to competition and, if section 271 relief is granted, that markets remain open to competition. The United States Department of Justice has interpreted the federal Act to mean there must be “meaningful,” “substantial,” and “irreversible” competition before the public interest can be served.<sup>30</sup>

As recited in the attached affidavit of Ms. Marymargret Williams Groom, certain anticompetitive practices of BellSouth show that grant of BellSouth’s application would not be in the public interest at this time.

BellSouth has filed “WinBack” tariffs in its region states, including Louisiana. Under the tariff, BellSouth makes discounts available only to CLEC customers and not to BellSouth’s own customers. While the tariff is styled as a promotion, with an offering period of ninety days, BellSouth requires that customers sign long-term contracts (one year or more), during which term the discount would apply. The intent is to prevent CLECs from gaining market share and to prevent competition by tying up customers with long-term agreements.

In response to such anticompetitive practices, the Louisiana Public Service Commission recently adopted rules that prohibit BellSouth from engaging in any win back activities for a

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<sup>30</sup> *Evaluation of the United States Department of Justice, Federal Communications Commission, In re Application of SBC Communications, Inc. et. al. For Provision of In-region InterLATA Services in Oklahoma*, CC Docket No. 97-121, filed May 6, 1997, at pp. 41-2.

seven day period after a customer switches to another provider, including prohibiting BellSouth's wholesale divisions from sharing information with its retail divisions – at any time, such as notice that certain end users have requested to switch local service providers, and prohibiting BellSouth from including any marketing information in its final bill sent to customers that have switched providers.<sup>31</sup>

As explained by Ms. Groom in her attached affidavit, BellSouth is apparently using proprietary information obtained from Xspedius through the BellSouth wholesale unit for the benefit of its own retail units. Following almost immediately the submission by Xspedius of orders to switch end user customers, BellSouth will contact the customers and attempt to convince these customers not to switch to Xspedius. Xspedius customers report that, after not hearing from BellSouth for years, they suddenly receive a call and/or a visit right after making the decision to switch to Xspedius.<sup>32</sup> The LPSC order cited above prohibits BellSouth's wholesale units from sharing information with its retail units *at any time*, such as notice that certain end users have requested to switch local service providers.

Additionally, as set forth in Mr. Clements J. Lejeune, Jr.'s affidavit, Xspedius has been hampered by BellSouth's poor performance and lack of responsiveness to customer affecting service outages. Xspedius experiences repeat troubles with the facilities it purchases from BellSouth, especially T-1 facilities. BellSouth may repeatedly test a T-1 facility before discovering the source of chronic problems, each time charging Xspedius a "no trouble found"

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31 Louisiana Public Service Commission, Order No. U-22252(E), *In re: Consideration and review of BellSouth's preapplication compliance with section 271 of the Telecommunications Act of 1996 and to provide a recommendation to the FCC regarding BellSouth's application to provide interLATA services originating in-region*, at page 3, (September 21, 2001).

32 Groom Affidavit at paras. 3 - 5.



charge when in fact a trouble did exist but simply was not discovered by the BellSouth technician.<sup>33</sup>

Moreover, BellSouth has failed to implement proper procedures and safeguards to ensure that customer affecting outages are prevented; and when such outages occur, BellSouth has not implemented proper procedures that enable BellSouth to timely discover the outage and take appropriate corrective action prior to Xspedius' customers losing service. Mr. Lejeune recounts a recent such outage that resulted in over 100 Xspedius customers losing service for over four hours.<sup>34</sup>

Accordingly, the Commission cannot find BellSouth's provision of in-region interLATA services from Louisiana in the public interest while BellSouth continues to violate the LPSC's order by engaging in such improper and anticompetitive activities, and failing to implement procedures to ensure customer affecting outages are discovered and resolved in a timely manner.

#### **IV. CONCLUSION.**

As demonstrated in the Goodly, Groom and Lejeune affidavits, BellSouth has failed to comply with Checklist Items two and eleven, and fails to satisfy the public interest requirement under the Act. Therefore, until BellSouth corrects the recurring problems identified by Ms. Goodly, Ms. Groom and Mr. Lejeune, the Commission should not approve BellSouth's application to provide long distance service originating in Louisiana.

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<sup>33</sup> Affidavit of Clements J. Lejeune, Jr., at para. 4.

<sup>34</sup> Id., at para. 5.

Respectfully submitted:



Paul F. Guarisco

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Dated: March 4, 2002

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re:

JOINT APPLICATION BY BELL SOUTH  
CORPORATION, BELL SOUTH  
TELECOMMUNICATIONS, INC., AND BELL SOUTH  
LONG DISTANCE, INC. FOR PROVISION OF IN-  
REGION, INTERLATA SERVICES IN GEORGIA AND  
LOUISIANA.

CC Docket No. 02-35

**AFFIDAVIT OF DEBRA GOODLY**

I, **DEBRA GOODLY**, being duly sworn upon oath, do hereby depose and state as follows:

1. My name is Debra Goodly. I am employed by Xspedius Corp. ("Xspedius") as Director of Provisioning. In that capacity, I direct and oversee the groups within Xspedius that process all outgoing customer service orders with BellSouth's Local Carrier Service Center ("LCSC"), and that process orders for long term number portability ("LNP") required when a customer converts from BellSouth facilities to Xspedius facilities. I interact with the BellSouth LCSC on a daily basis. My business address is 901 Lakeshore Drive, Lake Charles, Louisiana 70601. I have personal knowledge of the matters set forth in this Affidavit. The service problems described in this affidavit relate to events occurring after April 14, 2000 through the present time.

2. I am submitting this affidavit for use in support of Xspedius' opposition comments in Federal Communications Commission, Common Carrier Docket No. 02-35, and for any other lawful purpose.

3. Despite ongoing efforts working with our BellSouth Account Team, Xspedius continues to experience premature disconnects of customers in Louisiana. This results in the customer losing service prior to being converted to Xspedius. This problem occurs when

BellSouth processes customer disconnect orders before the customers' numbers are ported to Xspedius' switches. This problem also occurs when disconnect orders are worked by BellSouth despite Xspedius notifying BellSouth of a change in the due date for a customer conversion

4. Making the experience of losing telephone service worse, when the customer contacts the BellSouth customer service center to complain about loss of service, the BellSouth customer service representative advises the customer that Xspedius is responsible for the disconnect order and refuses to accept a trouble ticket from the customer. When this happens, Xspedius must intervene by contacting BellSouth's customer service center because BellSouth's LCSC cannot contact the customer once the disconnect order has been processed by BellSouth. In the majority of these instances, Xspedius must then contact the BellSouth repair center and request that BellSouth again check the date that the customer was due to be converted to Xspedius. Only at this time will BellSouth accept a trouble ticket from the customer.

5. BellSouth also refuses to allow a three-way telephone conference between BellSouth, Xspedius and the customer to assist in resolving an outage more quickly. Besides creating more delay, this refusal to allow a three-way telephone conference leaves the erroneous impression with the customer that the premature disconnect was caused by the fault of Xspedius.

6. I have requested that BellSouth appoint someone to contact the customer and advise the customer why his or her service was disconnected from BellSouth prior to being installed with Xspedius. This is important because in some instances, Xspedius has lost customers due to the premature disconnection of his or service due to no fault of Xspedius.

7. It has been my experience that these premature disconnections of customers have occurred frequently and repeatedly since April 14, 2000 through the present time. It is also

my impression that there is a lack of urgency on the part of BellSouth to have these customers' service reconnected once their service is lost due to the frequency of these incidents.

8. Xspedius has begun using BellSouth's Local Exchange Navigation System ("LENS") interface to place its resale and unbundled network element platform ("UNE-P") orders. Xspedius uses BellSouth's TAG interface to electronically submit orders.

9. Xspedius is also experiencing recurring problems having customer numbers being ported on the scheduled date due to BellSouth's failure to concur (i.e., release the numbers to Xspedius) in the scheduled port date in the Number Portability Administration Center ("NPAC") database prior to the scheduled date of the port. When BellSouth has not concurred in the porting of the customer's numbers, on the date of the scheduled number porting, the customer may be unable to receive incoming calls. This results in Xspedius having to reschedule the conversion date with the customer, or calling the BellSouth LCSC and waiting for BellSouth to manually concur in the number porting at that time. Of course, this results in customer inconvenience and frustration.

10. Xspedius has raised this issue with its BellSouth account team representatives in order to find a solution to the problem. BellSouth has responded that these problems recur because of a lack of training of its representatives.

11. Xspedius continues to experience instances where coordinated customer conversions are not performed as scheduled. Once Xspedius submits a local service request ("LSR"), BellSouth will responds with a firm order confirmation ("FOC") date. However, the scheduled conversion date is frequently missed because BellSouth fails to input or load the FOC date in its "C-Win Center." Thus, BellSouth's technicians are not aware that a customer conversion has been scheduled to be worked on a certain FOC date. This results in Xspedius not being able to port the customer's number on the FOC date. When this happens,

BellSouth is not willing to re-schedule the conversion, but instead requires that a new FOC date be established, which results in unnecessary delay for the customer.

12. Another example of unnecessary delay that Xspedius continues to experience is BellSouth's practice of repeatedly clarifying the same order. BellSouth may reject a customer conversion order for one reason and then when Xspedius makes the correction and sends the order back to BellSouth, BellSouth rejects it for another reason, rather than noting all errors at once. This requires Xspedius to continually re-submit the same order. Each correction delays the customer conversion another 48 hours. Additionally, Xspedius is required to pay a charge to BellSouth on each version of the order that has been clarified. Regardless of the reasons for the clarifications, an accurate one-time clarification would shorten customer conversion times.

13. Xspedius also experiences recurring problems with service order accuracy where Xspedius submits service orders which are not completed accurately by BellSouth. One particular example of this problem is when Xspedius submits an order to install a certain number of customer loops, and BellSouth installs less than the number correctly set forth on the order. When the conversion order is initially submitted by Xspedius, BellSouth will respond with a firm order confirmation to Xspedius that it will install all loops requested. However, on the installation date, BellSouth will then advise Xspedius that it will install some lesser number of loops because the service order data at BellSouth's C-WINS center shows some lesser number of loops than requested by Xspedius, and as earlier confirmed by BellSouth. When this happens, BellSouth delays the customer installation instead of installing on the firm order confirmation date. This results in customer frustration.

14. Access to due dates is also a problem. BellSouth will not provide Xspedius exact times of delivery of loops, including T-1's. Xspedius also requests and schedules

coordinated hot cuts with BellSouth. However, when the conversion time arrives, BellSouth may not be ready to perform the conversion despite prior confirmation with Xspedius.

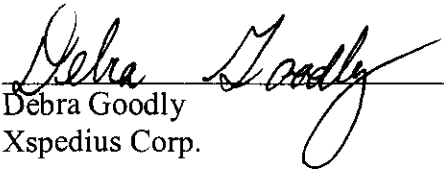
15. Another recurring problem is the accuracy of BellSouth's customer service records. For example, in many instances CSRs will indicate that some customers have local service provider freezes in place preventing the conversion of these customers' accounts. Frequently, these customers will advise Xspedius that they never authorized a local service provider freeze being placed on their accounts. Having the CSR corrected adds unnecessary delay to the conversion process. Another example of inaccurate CSRs is the inclusion of an xDSL service code. Because BellSouth refuses to provide its xDSL service to end users taking voice service from a CLEC, until this service code is removed from the CSR, BellSouth will not convert the customer account to Xspedius. I have experienced many instances where the xDSL service code is included on customers' CSRs when in fact these customers were not xDSL customers of BellSouth. Having this service code removed from inaccurate CSRs adds an extra 15 – 20 days to the conversion interval, which delays the installation of Xspedius service. Correction of these inaccurate CSRs also requires that these customers contact BellSouth, which provides BellSouth another sales opportunity to entice these customers from switching to Xspedius.

16. Xspedius has also experienced problems ordering the UNE-Platform from BellSouth. An example of a recurring problem with UNE-P orders is BellSouth processing conversions prior to the scheduled due date requested by Xspedius.

17. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 1, 2002.

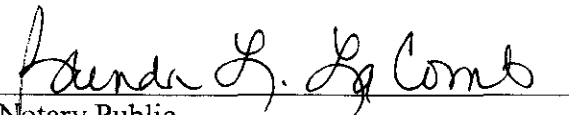
  
Debra Goodly  
Xspedius Corp.

STATE OF LOUISIANA                    )  
  )  
PARISH OF CALCASIEU                )

Subscribed and sworn to before me this 1<sup>st</sup> day of March, 2002.

Witness my hand and official seal.

My Commission expires: at death

  
Notary Public



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of:

JOINT APPLICATION BY BELL SOUTH  
CORPORATION, BELL SOUTH  
TELECOMMUNICATIONS, INC., AND BELL SOUTH  
LONG DISTANCE, INC. FOR PROVISION OF IN-  
REGION, INTERLATA SERVICES IN GEORGIA AND  
LOUISIANA.

CC Docket No. 02-35

**AFFIDAVIT OF MARYMARGRET WILLIAMS GROOM**

I, **MARYMARGRET WILLIAMS GROOM** being duly sworn upon oath, do hereby depose and state as follows:

1. My name is Marymargret Williams Groom. I am employed by Xspedius Corp. ("Xspedius"), as a Major Account Manager. In that position, I am responsible for customer sales and developing price quotes for selling local, long distance and Internet service in the Baton Rouge, Lafayette, Lake Charles and Shreveport markets in Louisiana. My business address is 3636 South Sherwood Forest Boulevard, Suite 600, Baton Rouge, Louisiana 70816. I have personal knowledge of the matters set forth in this Affidavit.
2. I am submitting this affidavit for use in support of Xspedius' opposition comments in Federal Communications Commission, Common Carrier Docket No. 02-35, and for any other lawful purpose.
3. In my dealing with customers and potential customers in Louisiana, I have discovered that BellSouth uses a variety of tactics to win back customers that have switched or contemplating a switch to Xspedius from BellSouth. These tactics include waiving fees for various services, providing customers with monetary credits, and giving customers non-tariffed rates. It also appears that BellSouth is using proprietary information obtained from Xspedius through the BellSouth wholesale unit for the benefit of its own retail units. After

Xspedius submits an order to switch an end user from BellSouth to Xspedius, or requests a copy of the Customer Service Record (CSR), a salesperson from BellSouth contacts the end user almost immediately in an attempt to convince the customer to stay with BellSouth. Xspedius customers advise me that, after not hearing from BellSouth for years, they suddenly receive a call and/or a visit right after making the decision to switch to Xspedius. The submission of the request for the CSR by Xspedius to BellSouth acts as the trigger for BellSouth to send out its winback team to the customer contemplating a switch.

4. In January of this year, while in a sales meeting with the United States Postal Service, I advised the Postal Service representative that in order to provide the Postal Service with a price quote and cost analysis, Xspedius required that the Postal Service execute a Letter of Authorization permitting Xspedius to obtain the relevant CSRs from BellSouth. I advised the representative of the Postal Service to expect a phone call from BellSouth after BellSouth received Xspedius' request for the Postal Service CSRs.

5. At a follow-up visit, the Postal Service representative advised me that he had in fact received a call from BellSouth regarding the customer service records and inquired into why the Postal Service was considering switching its service from BellSouth to Xspedius.

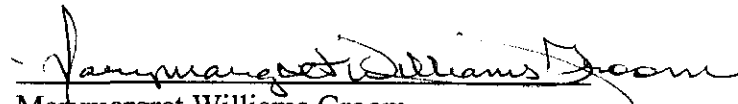
6. This example shows that BellSouth makes it very difficult for Xspedius to compete by leveraging its monopoly position in the market in unfair and anticompetitive ways.

7. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Affidavit of Marymargret Williams Groom  
Xspedius Corp.  
March 1, 2002  
CC Docket No. 02-35

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 1, 2002.

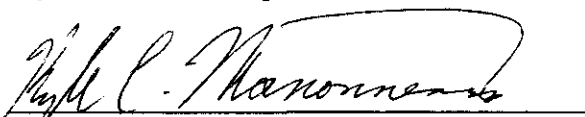
  
Marymargret Williams Groom  
Xspedius Corp.

STATE OF LOUISIANA                     )  
  )  
PARISH OF EAST BATON ROUGE        )

Subscribed and sworn to before me this 1<sup>ST</sup> day of March, 2002.

Witness my hand and official seal.

My Commission expires: at death

  
Notary Public

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re:  JOINT APPLICATION BY BELL SOUTH CORPORATION, BELL SOUTH TELECOMMUNICATIONS, INC., AND BELL SOUTH LONG DISTANCE, INC. FOR PROVISION OF IN- REGION, INTERLATA SERVICES IN GEORGIA AND LOUISIANA.	CC Docket No. 02-35
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**AFFIDAVIT OF CLEMENTS J. LEJEUNE, JR.**

I, **CLEMENTS J. LEJEUNE, JR** being duly sworn upon oath, do hereby depose and state as follows:

1. My name is Clements J. Lejeune, Jr. I am employed by Xspedius Corp. ("Xspedius"), as Vice President of Planning and Engineering. My business address is 901 Lakeshore Drive, Lake Charles, Louisiana 70601. I have personal knowledge of the matters set forth in this Affidavit.

2. I am submitting this affidavit for use in support of Xspedius' opposition comments in Federal Communications Commission, Common Carrier Docket No. 02-35, and for any other lawful purpose. The problem described in this affidavit relates to events occurring after April 14, 2000 through the present time.

3. Xspedius' ability to compete in Louisiana has been hampered by BellSouth's poor performance and lack of responsiveness to customer affecting service outages. Aside from the problems involved in turning up service from BellSouth, once service is finally installed, loop and transport problems frequently occur affecting our customers.

4. Xspedius experiences repeat troubles with the facilities it purchases from BellSouth, especially T-1 facilities. BellSouth may repeatedly test a T-1 facility before discovering the


source of the chronic problem, each time charging Xspedius a “no trouble found” charge when in fact a trouble did exist but simply was not discovered by the technician.

5. For example, Xspedius recently experienced a customer outage in Lafayette due to a BellSouth technician failing to recognize a jeopardy condition on a SONET ring ( transmitter card failure putting the ring into Simplex condition), subsequently pinching the fiber ring and then failing to properly check for outages and escalate the problem for timely repair. Over 100 Xspedius customers were without service for approximately four hours due to BellSouth’s outage. This outage occurred over SONET ring service that Xspedius purchases directly from CoStreet Communications, which is reselling BellSouth’s SONET ring service. As a result of this customer outage, BellSouth has advised CoStreet and Xspedius that it has changed internal procedures to prevent such outages from occurring in the future. Attached hereto as ***Exhibit 1*** is correspondence from CoStreet Communications and BellSouth reciting the reasons for the outage, and how BellSouth intends to prevent such outages in the future. It remains to be seen whether these new procedures will be implemented by BellSouth and will enable BellSouth to more quickly identify and solve future outages.

6. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 1, 2002.

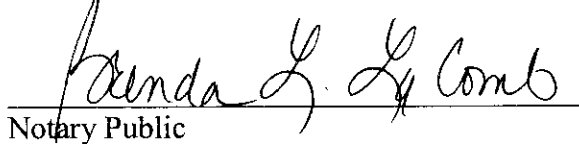
  
Clements J. LeJeune, Jr.  
Xspedius Corp.

STATE OF LOUISIANA                    )  
  )  
PARISH OF CALCASIEU                )

Subscribed and sworn to before me this 1<sup>st</sup> day of March, 2002.

Witness my hand and official seal.

My Commission expires: at death

  
Notary Public

**EXHIBIT 1**  
**(SEE ATTACHED)**



February 5, 2002

Mr. C.J. Lejeune  
Xspedius Accelerated Communications  
901 Lakeshore Drive, suite 200  
Lake Charles, LA 70601

Attached is a copy of BellSouth's response to questions posed by Xspedius on the Lafayette SONET ring outage.

Not included in BellSouth's written response to the Lafayette SONET ring outage questions are the following points made verbally by BellSouth executives during our call with them yesterday to discuss your questions:

1. When the transmitter card failed, there was no escalation by BellSouth due to the ring being in simplex condition. They treated the card failure as an outage, which did not affect service and handled it in a routine manner. BellSouth has subsequently told us that they have changed their procedures to:
  - a. Notify the General Manager and Area Managers by immediate page whenever a ring has gone into simplex condition and is vulnerable to failure.
  - b. The Network Reliability Center has been instructed to become more aggressive in their treatment of these failures and to be aware that the ring is vulnerable until the condition is fixed.
2. The network technician who was handed the transmitter card outage ticket did not respond to the trouble in a timely manner. He assumed incorrectly that the outage was not critical. BellSouth has conducted additional training since the Lafayette outage and has disciplined the technician involved.
3. In this particular instance, BellSouth maintenance personnel spent too long trying to find the source of the fiber cut, rather than fixing immediately the reason the ring was already in simplex condition. They have apologized for this error, and claim to have taken steps to remedy – through making the responsible managers and departments immediately aware when a ring goes into simplex condition and through additional training.



Our impression is that before this outage, BellSouth treated error conditions which cause a SONET ring to go into simplex condition as a routine, non-critical condition, that could be repaired routinely in 6 to 8 hours. They incorrectly assumed that the probability of a second error condition on the ring was very low, and that there was no sense of urgency to repair the initial error, and no escalation process or notification to their customers was necessary.

Based on our numerous conversations and several written responses, we now believe that there is a much-heightened level of awareness and response from BellSouth at the time a ring is initially impacted. BellSouth states that the maintenance work, which caused the fiber cut, was not being performed on the ring, but was work within the same cable sheath. .

We do believe that their slow response to the initial card failure should not occur again, and that as a result of this outage and the steps taken by BellSouth to improve their response, that the likelihood of a similar instance should be less in the future.

We hope this helps to explain the outage and steps taken to improve response.

Sincerely,  
*Arash Zarei*

Arash Zarei  
President, CoStreet Communications



Mr. Arash Zarei  
President  
CoStreet Communications, Inc.

Dear Mr. Zarei,

You recently asked for more clarification on the outage you experienced in January 16<sup>th</sup>. The following information hopefully answers those eighteen questions in detail.

1. Which Central Office was contacted? The Network Reliability Center (NRC) contacted the Lafayette Main Central Office at approximately 1:34 on the transmitter card failure. Prior to that time no contact was made to field personnel.
2. Was contact to Craft or Management? Initial contact was from craft in NRC to craft in the Louisiana Work Management Center, the management team was involved on the subsequent ring outage.
3. Why didn't ticket go thru the ACAC or the LA Work Management Center? The NRC is the alarm monitoring entity for BellSouth. Any customer specific reports are handled by the ACAC while both the ACAC and the NRC interface with the Work Management Center to coordinate resource deployment.
4. What was the method of the Automated Handoff? Our Work-Force Administration system (WFA-C) formerly known as CIMAP handles all handoffs between departments.
5. Was there a follow-up phone call? Was a follow-up of any type made after the ticket was issued? The initial transmit card failure did not have a follow-up call made until after the ring outage occurred. The subsequent ring outage reported to the ACAC resulted in ACAC management intervention as well as Work Management Center involvement.
6. Who at BellSouth was watching the clock on this ticket for Internal Escalation? Internal escalation calls was not made by the NRC, however, the ACAC escalated to the Louisiana management team to facilitate expedient restoral after the ring outage report was received.
7. Who accepted or picked up the ticket at the Local Level, at what time and when did work or planning for the restoral start? After the ring outage occurred, the ACAC handed the ticket to the Louisiana WMC and escalated to the manger in the WMC and also to the central office manager.
8. It should be well known throughout Bellsouth that a Local SONET Tech is generally not sitting next to a Trouble ticket System-was a person-to-person contact initiated at any time before the fiber failed? There was no contact to a technician prior to the actual ring failure.

9. At 12:50pm-Aerial splice Failure-2 Hours passed from the time the Transmitter failed and the Aerial splice damage occurred. How can a ticket of this nature be issued with no apparent follow-up and left in a ticket queue for a Two Hour period? Generally, a ring placed in Simplex condition is critical but not service affecting. Our NRC usually facilitates the repair of rings in this condition within 6 to 8 hours. Unfortunately, in this case, service was impacted by multiple faults occurring within a very close proximity of each other ( transmitter card failure and the subsequent pinched fiber).

10. If it was known that there was a SONET Ring operating in an impaired condition, why was work allowed on the Protect Side of the ring? The transmitter failure was on Primary side of the ring and unfortunately the pinch fiber was on the protect side. The technician that caused the pinched fiber was not working on the ring itself but was working in the cable sheath that contained the protect side fiber. He had no way of knowing the ring was in simplex condition or that he caused the outage.

11. Why did the Tech doing work in the Aerial Splice Case depart without a call to a NOC or other Surveillance department to make sure all Systems were good before leaving? The technician's must log in with the WMC before opening and closing splice cases. This technician followed the procedures but was unaware of the problem he induced into the ring by pinching the fiber as he was closing the splice case.

12. Why did BellSouth NRC or other group not notify CoStreet about the transmitter failure before the Fiber Damage? Why didn't BellSouth pro-actively contact CoStreet and advise of the Ring impairment? The transmitter outage was not service effecting and generally we are able to resolve these problems prior to ring outages. However, BellSouth will investigate developing a process to notify CoStreet of any simplex condition that can potentially impair service.

13. When was the Ring restored to full route diversity - meaning, when was the splicing on the damaged aerial fibers completed? Splicing was completed on 1/17/02 at 12:20pm.

14. What measures are going to be put in place by BellSouth to ensure tickets are picked up in a timely manner? The NRC instituted a process of notification to the General Manager and the Field Manager responsible for the turf where a simplex condition may exist. We believe this will heighten the sense of urgency of repair.

15. How are internal timers going to be used to ensure someone at BellSouth owns a ticket and it is not just dropped off with no internal escalation? BellSouth stress what we call "The Customer Rules". These rules are: 1) Take Ownership and Show We Care, 2) Be Responsive and Deliver, 3) Do It Right, 4) Make It Seamless and 5) Meet Our Commitments. The rules are engrained in everyone throughout the company and reflect our commitment to eliminating execution issues.

16. What measures are going to be implemented by BellSouth to notify Local Field personnel of impaired status of rings? Immediate escalation to the turf General Managers and Field Managers of rings in simplex condition by the NRC is the new process implemented by BellSouth.

17. What assurance is there that a future failure of one path of a ring will stop work in or around the protect path? BellSouth can not assure you that a failure on one path will stop work in or around a protect path, however, we can assure you that every effort will be made to prevent any outage from occurring on a ring either by equipment failure or workman error.

18. How can BellSouth explain the 3 hours it took to replace the transmitter module? Again, normally our Network Reliability Center can facilitate the normalizing of a ring within 6 to 8 hours without experiencing the type outage you had. We were not as aggressive with our escalation process as we should have been and subsequently experience an additional complication that caused the outage.

On behalf of BellSouth, let me apologize for this outage and its impact on your end-users. We believe our processes are sound and can provide you with the level of service you expect and deserve. We are committed to serving you and fully expect to delight you as a customer. In the future, if you have any operational needs, please contact me @ 205-988-6800.

Sincerely,

Keith Andrews

Operation AVP

BellSouth's ACAC/ICSC